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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1008

PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

JEFFREY BAYLES, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now the Respondent, Jeffrey Bayles, by his counsel John H. Reid, Deputy Defender, Office of the State Appellate Defender, Fifth Judicial District, and moves This Honorable Court to permit him to proceed *in forma pauperis* pursuant to Supreme Court Rule 46. In support thereof it is stated:

1. Respondent has proceeded in the Supreme Court of Illinois as an indigent, represented by his appointed counsel, the Office of the State Appellate Defender, Fifth District Office. (Order declaring Respondent indigent and appointing counsel attached hereto.)

2. Respondent remains indigent and is unable to pay any docket or other fees. (Affidavit in support of this motion attached hereto.)

WHEREFORE Respondent prays that This Honorable Court permit him to proceed *in forma pauperis* in this cause.

Respectfully submitted,

JOHN H. REID
Deputy Defender
Office of the State Appellate Defender
Fifth Judicial District
602 Main Street
Mt. Vernon, Illinois 62864
(618) 244-3466

COUNSEL FOR RESPONDENT

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-1008

PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

JEFFREY BAYLES, Respondent

AFFIDAVIT IN SUPPORT OF
MOTION TO PROCEED IN FORMA PAUPERIS

I, Jeffrey Bayles, being first duly sworn, depose and say that I am the respondent in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes(X) No( )
   Earning $150 per week

2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes(X) No( )
   b. Rent payments, interest or dividends? Yes( ) No(X)
   c. Pensions, annuities or life insurance payments? Yes( ) No(X)
   d. Gifts or inheritances? Yes( ) No(X)
   e. Any other sources? Yes(X) No( )

   If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months:
   Employment at Gedco Remodeling Co. - Approximately $7200
   Basic Educational Opportunity Grant - $1600

3. Do you own cash, or do you have money in a checking or savings account? Yes( ) No(X)

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes(X) No( )

   If the answer is "yes" describe the property and state its approximate value:

   1977 Ford Pickup Truck, approximate value $1500

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support:

None

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 3-4-81
(Date)

Jeffrey J. Bayles
(Signature)

Suscribed and sworn to before me
this 4 day of March, 1981

Durwood Q. Hurst
Notary Public

10 (10929—3M—12-78)
Form 1

United States of America

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the*

tenth *day of* March *in the year of our Lord, one thousand nine hundred and*

eighty *, within and for the State of Illinois.*

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE

JUSTICE ROBERT C. UNDERWOOD — JUSTICE DANIEL P. WARD

JUSTICE HOWARD C. RYAN — JUSTICE WILLIAM G. CLARK

JUSTICE THOMAS J. MORAN — JUSTICE THOMAS E. KLUCZYNSKI

WILLIAM J. SCOTT, ATTORNEY GENERAL

LOUIE F. DEAN, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

BE IT REMEMBERED, that, to-wit: on the 19th day of March, A. D. 1980, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

People State of Illinois, Appellant	)	
No. 52687 vs.	)	Appeal from Appellate Court
Jeffrey Bayles,	)	Fifth District
	)	78-471
Appellee	)	77-CF-27

And now, on this day, the Court having duly considered the motion by appellee, pro se, for an extension of time for filing brief and for appointment of counsel, and now being fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by appellee, pro se, for an extension of time for filing brief and for appointment of counsel be, and the same is, allowed.

It is further ordered that the State Appellate Defender for the Fifth District is appointed to represent appellee.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 12th day of March, A.D. 1981.

Clell. Woods

Clerk,
Supreme Court of the State of Illinois.

NO. 80-1008

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

JEFFREY BAYLES, Respondent.

ON PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT
OF ILLINOIS

BRIEF FOR RESPONDENT IN OPPOSITION

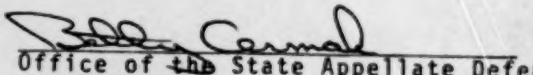
PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that she has served the required number of copies of the Motion To Proceed *In Forma Pauperis* in the above entitled cause on the following named persons by placing said document in the United States Post Office at Mt. Vernon, Illinois with first class postage fully prepaid thereon, addressed to:

Mr. Martin N. Ashley
State's Attorneys Appellate
Service Commission
1907 Broadway
Mt. Vernon, Illinois 62864

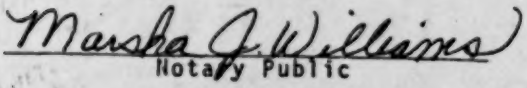
Mr. Jeffrey Bayles
807 West Main
Carbondale, Illinois 62901

Mt. Tyrone Fahner
Attorney General
188 West Randolph Street
Suite 2200
Chicago, Illinois 62864



Office of ~~the~~ State Appellate Defender
Fifth Judicial District
602 Main Street
Mount Vernon, Illinois 62864
(618) 244-3466

Subscribed and sworn to before me
this 19th day of March 1981.



Notary Public

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BRIEF FOR RESPONDENT IN OPPOSITION

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COUNSEL FOR RESPONDENT

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Respondent.

ON PETITION FOR A WRIT OF
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OF ILLINOIS

BRIEF FOR RESPONDENT IN OPPOSITION

JURISDICTION

Petitioner's Appeal to the Illinois Supreme Court resulted in the affirmance of a lower court order reversing respondent's conviction due to the improper inventory of his suitcase by police. Alleging that the Illinois Supreme Court's decision was not compelled by the Fourth Amendment to the United States Constitution, the petitioner invokes jurisdiction pursuant to 28 U.S.C. Sec. 1254 (1).

QUESTION PRESENTED FOR REVIEW

Whether the Illinois Supreme Court's decision suppressing evidence seized during an alleged inventory search was, under the particular facts of this case, consistent with the previous rulings of This Court?

STATEMENT OF THE CASE

Following a one-car accident along a rural highway in Johnson County, Illinois, a car driven by respondent came to rest in an upside-down position along the side of the road. (R.488) Respondent's fiancee had been thrown out of the car during the accident and was killed. Respondent, although not seriously injured, remained trapped inside the vehicle. (R.152) The trunk lid had opened and was folded under the roof. Items of personal property had been strewn about the area. (R.73, 156-57) Among these items was a purple cloth bag, a brown shaving kit, and a brown suitcase which had fallen open.

Among the first to arrive at the scene was Greg Carlock, a nearby resident. After observing that the injured woman was "beyond hope", Carlock went over to the vehicle and engaged in conversation with the respondent. (R.152) Respondent asked Carlock to close the suitcase lying underneath the trunk because an item of value was inside. (R.154,159) Carlock went over to the suitcase, tucked in a shirt and sweater, closed the suitcase, latched both latches, and rolled the tumbler once. (R.154) Both sides of the suitcase appeared to have been latched; the suitcase could have been picked up and carried by its handle without opening. (R.154-55,159,161) Carlock returned to respondent's presence, telling respondent of Carlock's compliance and that he would tell the Sheriff to watch the suitcase. (R.158) Respondent made no response to this latter comment. (R.158) James Williams also heard Carlock tell respondent that the matter had been taken care of. (R.147) All of these events took place prior to the arrival of the police. (R.155)

Carlock also observed, among the items strewn about the scene, a purple cloth drawstring bag and a shaving kit. The drawstrings of the purple cloth bag, emblazened with the Seagram's Crown Royal logo, were drawn closed; thus, Carlock had no idea as to what it contained. (R.156-57) He observed the cloth bag from a distance of three feet. (R.160) The shaving kit was also closed. (R.156)

The first police officer to arrive at the scene was Johnson County Sheriff Elry Faulkner, who along with Carlock helped respondent out of the car and into an ambulance. (R.94, 157) Deputy Sheriff James Alsip also arrived at approximately the same time. (R.71,72) Carlock informed Sheriff Faulkner that he had closed the suitcase and asked Faulkner to watch it. (R.157,160) Sheriff Faulkner confirmed that Carlock had stated that respondent wanted Carlock to take charge of his property and that Carlock, in turn, had told respondent that he would tell Faulkner about it. (R.99)

After respondent was placed in the ambulance, Faulkner began to pick up certain items of personal property scattered about the scene. (R.94) The first item to attract his attention was the purple cloth bag, which according to Faulkner was open at the top and had plastic sticking out. (R.180) This plastic aroused his suspicions, as he testified "if you'll check my record, I'm very suspicious of any plastic bags because that's usually what narcotics come in." (R.92) At this time, Faulkner was also looking for beer inside the car. (R.195-96) Faulkner opened the bag and inside observed green plant material and tin foil packets. (R.94) The State never attempted to introduce these items into evidence at respondent's trial. Faulkner then handed the bag to Deputy Alsip for safekeeping. (R.95)

Sheriff Faulkner next opened the shaving kit, located inside the car, and discovered a large sum of money. (R.188) He opened the kit because he had already found cannabis inside the cloth bag. (R.188) Faulkner could not recall whether Carlock had spoken with him prior to the time that he opened the shaving kit. (R.189)

Sheriff Faulkner testified that at some point he directed Alsip to take charge of the personal property, which to Faulkner meant to take an inventory. (R.192) Alsip testified that he did not start the inventory until after the cloth bag and shaving kit had been opened. (R.176-77) At the hearing on respondent's Motion for Rehearing on Motion to Suppress, defense counsel

produced testimony by both Alsip and Faulkner at a Williamson County proceeding to the effect that State Trooper Donald Thady (who arrived at the scene subsequent to the pair) had asked Sheriff Faulkner to take the inventory. (R.233-34) Alsip had also testified that while it was customary for the Sheriff's Department to take and inventory, Thady was then the officer in charge. (R.233) Trooper Thady testified at that same hearing that he had requested Sheriff Faulkner to make an inventory after he had already observed the cannabis. (R.234) At trial, Thady testified that he asked Faulkner whether Faulkner wanted to take care of the inventory. (R.445)

Both Sheriff Faulkner and Deputy Sheriff Alsip characterized the search of all items as an inventory. At one point, Alsip testified "This is an inventory is what I was told." (R.185) Sheriff Faulkner explained that it was his unwritten policy to take an inventory of personal items removed from a vehicle at an accident scene, or any time a vehicle is towed in. (R.110,111,192) The purpose of this policy was to protect himself and the "victims". (R.111) Alsip concurred that the policy was intended "to help protect himself [the Sheriff], the money, and it's just his policy that we know what we're picking up." (R.63,184) It was also Faulkner's policy to open closed but unlocked containers. (R.112) However, Faulkner was uncertain whether his policy entailed the itemization of every object found inside such containers. (R.112)

When asked in a hypothetical question about how he would inventory a closed but unlocked toolbox, Deputy Alsip explained he would open the toolbox and inspect its contents. (R.175-76) When asked whether he would make an itemized list of everything inside the toolbox, Alsip replied "Well, yes, but not of every wrench or every socket where a tool set might contain two or three hundred pieces, no." (R.176) Finally, Faulkner testified that inventoried items were usually listed on a legal pad. (R.112)

Deputy Alsip, as part of the alleged inventory, began picking up items and placing them in the trunk of the squad car.

(R.73) At the time, he was not making the search to protect himself from danger and had no reason to believe that a gun or bomb was present. (R.184) Alsip denied that he and Faulkner were looking for drugs, but answered in an equivocal manner when asked whether the discovery of drugs was "just pure accident". (R.184) Respondent had never asked Deputy Alsip to open his suitcase. (R.171) Nonetheless, Alsip, aware of what defendant had said concerning the valuable nature of its contents, approached the suitcase and observed that one latch had sprung open and that the right side was open approximately one-half inch. (R.169,182) At the preliminary hearing, Alsip had described the suitcase as being closed. (R.90) Sheriff Faulkner also observed the suitcase lying on the ground, and testified that he could not see anything inside it. (R.191) Deputy Alsip testified that he expected to find more money. He opened the suitcase by pushing open the left latch, although "it was a little hard where it had been sprung." (R.89) Alsip never attempted to determine whether the right latch worked. (R.88) After opening the suitcase, Alsip observed more cash and a clear plastic bag containing a brown leafy substance. (R.169) He then opened a brown paper sack and discovered a brick of cannabis. (R.169) The entire search, which also involved the glove compartment, passenger compartment, and trunk area, revealed no other contraband. (R.83)

Eventually, a list of items retrieved was written down on paper containing the heading "I.B.I. Evidence Log". (R.215-20) Not on that list was the purple cloth bag; the contents of the suitcase (aside from the contraband) were listed only as "men's clothing". (R.175,178)

Prior to trial, respondent filed a Motion to Suppress the evidence seized during the above-described search. The court entered a written order on March 8, 1978 denying respondent's Motion to Suppress, for the reason that "the search of the suitcase in question in this cause was a proper inventory search and the subsequent seizure of evidence was likewise proper."

(R.42) Respondent's Motion for Rehearing on Motion to Suppress was denied after the court found no "change of facts that would change my previous ruling." (R.246)

Following a jury trial held on October 4 and 5, 1978, respondent was found guilty of the charged offense. (R.625)

Respondent appealed his conviction to the Illinois Appellate Court, and that court reversed his conviction upon its finding that the search of respondent's belongings "exceeded the permissible scope" of an inventory search. *People v. Bayles*, 76 Ill. App. 3d 843, 395 N.E.2d 663 (5th Dist. 1979). Further, the Appellate Court suggested that the officers' intrusion may have been for an investigatory purpose, rather than as an inventory search, noting that "[b]y Sheriff Faulkner's own testimony, fairly construed, he began looking through the defendant's effects at least partly because he suspected that he might find alcohol or narcotics, not simply to make an inventory." *Id.*, 395 N.E.2d at 669.

The State of Illinois appealed this decision, and on appeal the Supreme Court of Illinois affirmed the decision of the Appellate Court, holding that the search in question exceeded the scope of a proper inventory search. *People v. Bayles*, __ Ill. 2d __, __ N.E.2d __ (1980) (Appendix). The petitioner now brings its petition for a writ of certiorari to review the Illinois Supreme Court's decision.

REASON FOR DENYING THE WRIT

THE OPINION ISSUED BY THE ILLINOIS SUPREME COURT CAREFULLY AND CORRECTLY APPLIED THE PREVIOUS DECISIONS OF THIS COURT TO THE FACTS OF THIS CASE, AND THEREFORE DOES NOT MERIT FURTHER REVIEW BY THIS COURT.

The Illinois Supreme Court's opinion in this case contains a diligent application of This Court's previous decisions in the area of inventory searches to the particular facts which this case presents. Upon close examination it is also apparent that the Illinois Supreme Court's application was correct. Therefore, the State's petition, which is premised upon a mistaken reading of the record in this case and of the legal import of the decision below, should be denied.

In its petition, the petitioner makes the assertion that the decision of the Illinois Supreme Court "conflicts with the reasoning and holding in [*South Dakota v. Opperman*, 428 U.S. 364 (1976)]." (at p.7) Such assertion reflects a basic misunderstanding of *Opperman's* limited holding. In *Opperman*, Your Honors held that an inventory search of a motor vehicle, including its glove compartment, was permissible in view of the inherent mobility of and the diminished expectation of privacy which a person has in a motor vehicle. 428 U.S. at 367-68. Quoting from a previous decision to underscore this distinction, Your Honors stated:

> "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects....It travels public thoroughfares where both its occupants and its contents are in plain view." Cardwell v. Lewis, supra, at 590, 41 L.Ed. 2d 325, 94 S.Ct. 2464, 69 Ohio Ops 2d 69.

Opperman, 428 U.S. at 368.

In the present case, however, the alleged inventory search was not of a motor vehicle. Rather, the "inventory" concerned the opening of respondent's luggage at the scene of an automobile accident, even though the luggage had been closed and latched

pursuant to respondent's directions, and even though the police officers were advised of its valuable contents. Thus, the case at bar does *not* concern an inventory of an integral part of an automobile, nor the lesser privacy interests inhering therein, as in *Opperman*. Rather, this case concerns the alleged inventory of respondent's closed personal luggage which was expelled from a motor vehicle during a collision.

The contrast between the expectations of privacy one has in a motor vehicle and in repositories of personal effects was enunciated by This Court in *Arkansas v. Sanders*, 442 U.S. 753 (1979) and *United States v. Chadwick*, 433 U.S. 1 (1977). In *Sanders*, despite the existence of probable cause to search an item of luggage, and despite the fact that the luggage was itself transported in a motor vehicle, it was held that the "automobile exception" to the warrant requirement was inapplicable because

> ...[o]nce police have seized a suitcase, as they did here, the extent of its mobility is in no way affected by the place from which it was taken. Accordingly, as a general rule there is no greater need for warrantless searches of luggage taken from other places.
>
> Similarly, a suitcase taken from an automobile stopped on the highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations. One is not less inclined to place private, personal possessions in a suitcase merely because the suitcase is to be carried in an automobile rather than transported by other means or temporarily checked or stored. Indeed, the very purpose of a suitcase is to serve as a repository for personal items when one wishes to transport them. Accordingly, the reasons for not requiring a warrant for the search of an automobile do not apply to searches of personal luggage taken by police from automobiles....

Arkansas v. Sanders, 442 U.S. at 763-65.

In deciding the case at bar, the Illinois Supreme Court recognized the need to reconcile the principles set forth in *South Dakota v. Opperman* with the inherently greater privacy interest which respondent had in his luggage, according to *Sanders* and *Chadwick*. In satisfying that need, the court below

carefully adhered to the principles expressed in all three cases, and correctly applied them to the facts at bar.

Perhaps the most significant affirmation of the particular privacy interest respondent had in his suitcase was his specific instruction to bystander Greg Carlock to close the suitcase because it contained an item of value. Carlock complied with this direction, then informed respondent that he would ask the Sheriff to guard the suitcase. Short of seizing the suitcase himself, which he was unable to do, respondent could not have more plainly preserved his privacy interest in its contents. *See, People v. Bayles*, 76 Ill. App. 3d 843, 395 N.E.2d 663, 669 (5th Dist. 1979). Yet the petitioner, in a curious inversion of logic, states: "Any expectation of privacy that the respondent may have had in the suitcase *disappeared* when he requested Carlock to close the suitcase." (Petition at p.10) (emphasis added) Equally inexplicable is the State's suggestion that respondent's silence in the face of Carlock's assurance that he would inform the Sheriff of the closed suitcase's valuable contents constituted "a form of consent" to the officers' subsequent intrusion. *Id.* Clearly, such silence connotes no more than respondent's satisfaction that the suitcase, which was closed and latched on one side pursuant to his directive, would be guarded rather than opened and searched. Thus the State's theory of "implied consent" does nothing to overcome respondent's overt expectation of privacy in his suitcase.

Against respondent's heightened expectation of privacy in the closed suitcase, the Illinois Supreme Court carefully weighed the three distinct needs which an inventory search serves: the protection of the owner's property; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger. *South Dakota v. Opperman*, 428 U.S. at 369. The Supreme Court's cautious analysis led it to the sound decision that, under the facts of this case, none of these three objectives was furthered by a search of respondent's luggage. Rather it held that the first

two purposes of an inventory could equally have been accomplished by sealing the suitcase and marking it as a closed and sealed suitcase, and that such less-intrusive alternative would have concommitantly respected respondent's interest in the privacy of its contents. (Appendix at pp. 10-11)

The third purpose to be served by an inventory search -- the protection of the police from potential danger -- is non-existent in this case since none of the officers expressed concern for his own safety. Deputy Alsip candidly admitted he did not open the suitcase for such a reason, and also testified he had no reason to suspect that a gun or bomb was present. (Appendix at p.10) Although the petitioner concedes that such is the case, it nevertheless implies that the maximum intrusion should be allowed during any inventory involving personal luggage because of "the occasional danger that may exist". (Petition at 11) While it is possible to conjure up illusions of danger in nearly any situation, respondent would submit that the Illinois Supreme Court's case-by-case approach is more rational, and that under the facts of this case its analysis was correct.

In its Supplemental Brief, the petitioner cites the recent decision in *United States v. Markland*, __ F. 2d __ (2d Cir. December 8, 1980) for that case's alleged factual similarity to the case at bar. In *Markland* a state trooper came upon an automobile accident in which "a plastic, zippered beverage container bearing a Schlitz beer logo" had been expelled from the auto itself. The driver was coherent and was taken to a hospital. Then the trooper picked up the zippered bag and, noticing it was "suprisingly heavy", opened the bag and inspected its contents as part of his inventory procedure.

These facts reveal two critical differences between what occurred in *Markland* and what took place in the instant cause. Both distinctions go to the heart of the considerations enunciated in *Opperman*, *Sanders* and *Chadwick*. First, in *Markland*, the Court of Appeals emphasized that the container was an "impersonal package" which was "surprisingly heavy" for what it purported to contain. Thus, the Court observed that the bag could have contained

"anything from beer to bullion or a bomb." Noting the absence of a suggestion that the trooper's inventory of the contents was a "subterfuge for a criminal investigation", the Court focused on the reasonableness of his procedure as a gauge of its legitimacy. The Court concluded:

> Unless we are prepared to say that a reasonable person would pick up a heavy plastic thermal package like the one in this case and drive away with it in his automobile without first checking its contents, we should not fault Officer Fragoso for making such a check.

(Petitioner's Supplemental Appendix at p.6)

By contrast, the officers below expressed no fear for their own safety, nor was there any evidence to suggest that respondent's suitcase contained a bomb, a perishable or valuables which could not have been secured in a less intrusive manner.

The second important difference between *Markland* and the case at bar was the respective natures of the containers, a difference which the *Markland* Court took pains to point out:

> [Our conclusion that the search was reasonable] also rests in part on the nature of the object searched. The "Schilitz" bag was a type of container designed, and customarily used, for the storage and transport of food and drink. It was not a suitcase, briefcase, purse, or similar respository of personal effects "inevitably associated with the expectation of privacy," *see, Arkansas v. Sanders, supra*, 442 U.S. at 762. Of course, containers not "inevitably" used for the storage of private effects may benefit from an expectation of privacy under some circumstances, but this generally requires that the owner have taken some additional positive step objectively signalling to others an expectation that the privacy of the container's contents will be respected. *See, e.g., United States v. Dien*, 609 F.2d 1038, 1044-45 (2d Dir. 1979), *adhered to on rehearing*, 615 F.2d 10 (2d Cir. 1980) (defendant manifested expectation of privacy by securely taping cardboard boxes and secreting them behind plywood barrier in van whose windows had been blacked out). In this case, the fact that the "Schlitz" bag was zipped shut -- as it would ordinarily be in the course of normal use for storing food or drink -- was not alone sufficient to give objective notice of an expectation of privacy, in view of the nature of the container. *Cf. United States v. Mannino*, No. 80-1206, slip op. 333 (2d Cir. Nov. 18, 1980) (no expectation of privacy in plastic bag on car seat). In view of this conclusion, we need not decide whether the officer's action would have been unreasonable had he opened a suitcase or other

> protected form of luggage. *Cf. United States v. Bloomfield*, 594 F.2d 1200 (8th Cir. 1979) (tightly sealed knapsack should have been inventoried as a unit).

(Petitioner's Supplemental Appendix at pp. 6-7) Thus the Court of Appeals drew a sharp distinction between the facts before it and a situation whereby an owner of a suitcase or similar repository of personal effects might affirmatively signal an expectation that the privacy of its contents will be respected.

In the case at bar a suitcase was involved, and respondent moreover signalled his expectation that its contents remain private. Thus, *Markland* does not conflict with the Illinois Supreme Court's decision below, and provides no grounds for This Court to issue the writ.

Finally, the petitioner has represented to this Court that there is no suggestion that the search of respondent's suitcase was investigatory in nature. (Petition at p.8) However, the searching officers' own testimony, fairly construed, reveals that they initiated the search in part because they expected to find contraband or evidence. (*See*, Statement of the Case at p. 3) The Illinois Appellate Court expressly recognized this factor in its opinion (*People v. Bayles*, 395 N.E.2d at 669) and the petitioner's conclusory assertion is accordingly rendered erroneous. The respondent submits -- as he has at all stages of this appeal -- that the alleged inventory "was a pretext concealing an investigatory police motive." *See, South Dakota v. Opperman*, 428 U.S. at 375-76. Not only does this motive erase the petitioner's theory that the search of respondent's suitcase was an inventory, but it also eliminates any suggestion that the alleged inventory was conducted in "good faith" so as to bring this case within the umbrella of *United States v. Williams*, __ F.2d __ (5th Cir. 1980) 27 Ct. L. Rep. 3293 (September 3, 1980).

In conclusion, the Illinois Supreme Court's decision was correctly rendered upon its careful application of This Court's opinions in *Opperman, Sanders* and *Chadwick*. The Illinois Supreme Court also took pains to emphasize that this case was decided

upon its own facts, *not* upon a rule that "all warrantless openings of closed containers during the course of an inventory search are valid." (Appendix at p.11) Given this careful analysis, which is consistent with This Court's previous decisions, respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the reasons stated above, This Court should deny the petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

JOHN H. REID
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COUNSEL FOR RESPONDENT

APPENDIX

OPINION

SUPREME COURT OF ILLINOIS

RECEIVED
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OFFICE OF THE STATE APPELLATE DEFENDE
MT. VERNON, ILLINOIS

United States of America

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of September in the year of our Lord, one thousand nine hundred and eighty, within and for the State of Illinois.

PRESENT: JOSEPH H. GOLDENHERSH, CHIEF JUSTICE

JUSTICE ROBERT C. UNDERWOOD — JUSTICE DANIEL P. WARD

JUSTICE HOWARD C. RYAN — JUSTICE WILLIAM G. CLARK

JUSTICE THOMAS J. MORAN — JUSTICE THOMAS E. KLUCZYNSKI

TYRONE C. FAHNER [redacted] ATTORNEY GENERAL

LOUIE F. DEAN, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, that afterwards, to-wit, on the 17th day of October, 19 80 the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

People State of Illinois,

Appellant

No. 52687 vs.

Jeffrey Bayles,

Appellee

Appeal from Appellate Court Fifth District

CLELL L. WOODS
CLERK OF THE SUPREME COURT
STATE OF ILLINOIS

10 (10927—3M—12-78)

Docket No. 52687—Agenda 54—May 1980.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellant,
v. JEFFREY BAYLES, Appellee.

MR. JUSTICE RYAN delivered the opinion of the court:

This appeal concerns the warrantless opening and seizing of the contents of a closed, unlocked suitcase. The circuit court of Johnson County denied the defendant's motion to suppress the evidence seized, and the defendant was convicted. The appellate court reversed, with one justice dissenting. (76 Ill. App. 3d 843.) We granted leave to appeal.

On October 15, 1977, the defendant, Jeffrey Bayles, was involved in a one-car accident in Johnson County. His automobile was found in an upside-down position in a field next to a rural highway. Defendant was not seriously injured, but was trapped inside the vehicle. His fiance was thrown from the car and killed. Several items that had been in the car were found in the field. A deputy of the Johnson County sheriff's office, following established procedure of that office, inventoried the items found and also opened closed containers and inventoried their contents. Cannabis was found and seized from within a blue cloth drawstring sack and a brown suitcase. Tinfoil packets containing what was later determined to be a controlled substance were also found in the sack. Defendant did not contest the ownership of the sack and the luggage. He did, however, seek the suppression of the cannabis and the controlled substance discovered in the containers, alleging the violation of his constitutional right to be free from unreasonable searches and seizures. Only the contents of the suitcase are involved in this proceeding. The appellate court, with one justice dissenting, reversed defendant's conviction based on its finding that the inventory of the contents of defendant's suitcase constituted an illegal search.

Evidence concerning the inventory and the resultant discovery of the cannabis was adduced during the preliminary hearing, the hearing on defendant's motion to suppress, and the hearing on defendant's motion for a rehearing on the suppression motion. Gregory Carlock, a witness who resided near the scene of the accident, was one of the first persons to arrive at the scene. He testified that defendant told him that he had items of value in his

suitcase and requested that Carlock close the suitcase, which had been thrown from the car in the accident. Carlock stated that he tucked in some clothes that were sticking out of the case, closed both latches, and rolled the tumbler on the suitcase's combination lock. Carlock testified that he told defendant that he would tell the sheriff that he had closed the suitcase and that the sheriff should watch it since it contained items of value. According to Carlock, defendant did not respond to this statement. Carlock's actions were witnessed by another neighbor, James Williams, who testified that he observed Carlock tuck the clothes in and close the brown suitcase.

Johnson County Sheriff Elry Faulkner also testified. He stated that the blue cloth drawstring bag was lying outside the car by the trunk. The sack was open to the extent that he was able to see plastic sticking out of its opening. The sheriff opened the sack and found a plastic bag containing what was later determined to be approximately 5 grams of cannabis. He also discovered some green plant material and three tinfoil packets. The sheriff did not open the tinfoil packets; it was later determined that each contained one Methaqualone tablet. Faulkner shoved the plastic bag back into the sack, pulled the drawstring, and gave the sack to his deputy. The sheriff then stated that he saw a brown shaving-kit bag located inside the car. He opened the kit and discovered a large quantity of paper currency. The sheriff instructed his deputy to witness the counting of the money, which came to $1,255. Although the sheriff saw the brown suitcase situated on the ground at the rear of the car, he testified that he was unable to ascertain whether it was open. Faulkner stated that Carlock then informed him, within the hearing of his deputy, that the suitcase contained something of value.

The deputy sheriff of Johnson County, James Eugene Alsip, also testified. He stated that the sheriff was already at the scene of the accident at the time of his arrival. Sheriff Faulkner handed Alsip a blue cloth sack; the sack was closed at this time. The sheriff also had the deputy witness him count the $1,255 found in the brown shaving-kit bag. Alsip was then instructed by the sheriff to "take charge" of the property. Alsip understood this instruction to mean that he make an inventory of the items found at the scene of the accident. He overheard Carlock notify the sheriff of the presence of valuable items in the defendant's suitcase. According to Alsip, the suitcase was not

fully closed. Instead, one latch was unfastened and the case was open one-half to three-quarters of an inch on that side. Alsip unfastened the other latch and opened the suitcase. Inside he found some paper currency, a plastic bag containing a brown, leafy substance, and a closed, folded-over brown grocery bag. Alsip opened the brown bag and discovered a brick of marijuana. The contents of the suitcase are the basis of the possession-of-cannabis charge involved in this case.

According to both the sheriff and the deputy, the opening of closed, unlocked containers was in accordance with the inventory procedure customarily followed by the Johnson County sheriff's office. Sheriff Faulkner stated that it was the policy of his office to open closed, unlocked containers for the purpose of inventorying the items contained therein. He stated that he created this policy rule in order to protect both the owner of the property and the sheriff's office. Although he characterized the official activity as an inventory, the sheriff stated that he did suspect the presence of alcoholic beverages, since only one car was involved in the accident. Deputy Alsip testified that he believed an inventory of the suitcase to be necessary to protect defendant's valuables. He stated that he was aware of the discovery of the cash in the shaving-kit bag and he heard Carlock inform the sheriff of the presence of valuable items in the suitcase. Since the sheriff's office would be responsible for these items, Alsip deemed the inventory of the contents of the luggage to be necessary also for the protection of the officers. Alsip unequivocally stated that he was not looking for drugs, was not concerned for his safety, and that the inventory was not performed as a search incident to an arrest.

The fourth amendment to the Federal Constitution guarantees the individual the right to be free from unreasonable searches and seizures. In considering fourth amendment issues, our fundamental inquiry is whether or not the search or seizure was reasonable under all of the circumstances. (*United States v. Chadwick* (1977), 433 U.S. 1, 9, 53 L. Ed. 2d 538, 547, 97 S. Ct. 2476, 2482; *Cooper v. California* (1967), 386 U.S. 58, 59, 17 L. Ed. 2d 730, 732, 87 S. Ct. 788, 789-90.) The clause operates to protect persons, rather than places, from unreasonable governmental intrusions into their legitimate expectations of privacy. (*Katz v. United States* (1967), 389 U.S. 347,

351, 19 L. Ed. 2d 576, 581-82, 88 S. Ct. 507, 511.) As such, the application of the fourth amendment is not limited to the home but, instead, extends to searches conducted in a variety of settings, including searches of automobiles. (*United States v. Chadwick* (1977), 433 U.S. 1, 10, 53 L. Ed. 2d 538, 547, 97 S. Ct. 2476, 2482-83.) While a search warrant is generally constitutionally required for the search of an automobile, the rule is subject to exceptions. Warrantless searches of automobiles have been upheld where incident to an arrest; under the moving-automobile exception; when the vehicle is lawfully impounded; or if valid consent for the search has been obtained. (See Annot., 26 L. Ed. 2d 893 (1970).) Although there has been no judicial pronouncement that an inventory is a search (*People v. Hamilton* (1979), 74 Ill. 2d 457, 464; see *South Dakota v. Opperman* (1976), 428 U.S. 364, 369-71, 49 L. Ed. 2d 1000, 1005-07, 96 S. Ct. 3092, 3097-98; see generally 2 W. LaFave, Search and Seizure sec. 7.4, at 563-65 (1978)), the intrusion is tested for its constitutionality by an application of the fourth amendment reasonableness standard. *People v. Hamilton* (1979), 74 Ill. 2d 457, 465; *People v. Clark* (1976), 65 Ill. 2d 169, 174; *People v. Smith* (1969), 44 Ill. 2d 82, 88.

In the instant appeal, both parties concede that the Johnson County officers conducted an inventory of the defendant's disabled vehicle. According to the State, the inventory, conducted in conformity with regular departmental procedure, was reasonable in view of the exigencies presented by the case. This is also the position of the dissenting justice in the appellate court. (76 Ill. App. 3d 843, 853.) The defendant counters by asserting that no exigencies justified the opening of the suitcase and, by so doing, the officers exceeded the permissible bounds of an inventory procedure.

The United States Supreme Court has not yet ruled specifically on whether inventories of closed containers can be reconciled with the fourth amendment guarantee. In *South Dakota v. Opperman* (1976), 428 U.S. 364, 49 L. Ed. 2d 1000, 96 S. Ct. 3092, the court upheld the inventory search of a vehicle impounded for traffic violations. In that case, police officers discovered marijuana in the vehicle's unlocked, but closed, glove compartment. The court first held that the procedure of inventorying the contents of lawfully impounded vehicles, customarily

followed throughout the nation, was a reasonable measure used to further three legitimate objectives: the protection of the owner's property; the protection of the police against claims of lost or stolen property; and the protection of police from potential danger. Applying the three objectives enunciated in *Opperman*, this court has upheld the validity of an inventory search of an automobile lawfully impounded following a defendant's arrest. *People v. Clark* (1976), 65 Ill. 2d 169.

We note that the inventory in *Opperman* did not involve the opening of containers transported in the vehicle. The precedential scope of a decision is limited to the facts before the court. (*People v. Beard* (1974), 59 Ill. 2d 220, 225, *cert. denied* (1975), 421 U.S. 992, 44 L. Ed. 2d 483, 95 S. Ct. 1999.) The *Opperman* holding is confined, therefore, to cases involving warrantless inventory searches of closed, unlocked glove compartments in lawfully impounded vehicles. The language of both the separate opinions filed in the *Opperman* case supports this conclusion. In a concurring opinion, Mr. Justice Powell stated: "Upholding searches of this type provides no general license for the police to examine all the contents of such automobiles." (*South Dakota v. Opperman* (1976), 428 U.S. 364, 380, 49 L. Ed. 2d 1000, 1011-12, 96 S. Ct. 3092, 3102.) Mr. Justice Marshall, writing for the dissenting justices, stated that "the Court's opinion does not authorize the inspection of suitcases, boxes, or other containers which might themselves be sealed, removed and secured without further intrusion." (428 U.S. 364, 389 n.6, 49 Ill. Ed. 2d 1000, 1017 n.6, 96 S. Ct. 3092, 3107 n.6.) Thus, the United States Supreme Court has not yet ruled specifically on whether inventories of closed containers can be reconciled with the fourth amendment guarantee to be free from unreasonable searches and seizures.

In *United States v. Chadwick* (1977), 433 U.S. 1, 53 L. Ed. 2d 538, 97 S. Ct. 2476, San Diego railroad officials notified Federal narcotics agents of their suspicion that an unusually heavy, double-locked footlocker boarded for Boston contained contraband. Federal agents in Boston met the San Diego train and arrested three men after the footlocker had been loaded into the trunk of a waiting car. The respondents and the car containing the footlocker were then taken into custody. The agents unlocked and opened the footlocker approximately 1½ hours after the

warrantless arrests, finding a large quantity of marijuana. A search warrant had not been obtained, and consent to the search had not been given. The United States District Court granted the respondents' motion to suppress the seized marijuana, finding that the contraband was seized as a product of a search which violated the fourth amendment warrant requirement. The First Circuit Court of Appeals affirmed. The Supreme Court also affirmed, holding that the agents should have obtained a search warrant before opening the footlocker. In so holding, the court rejected two arguments advanced by the government. First, the government had asserted that a search of moveable, personal property legally seized in a public place does not require a warrant. According to the government, the search of the luggage should be viewed as being analogous to the warrantless search of a vehicle under the automobile exception. Under that exception, a search warrant is not required where police officers stop a vehicle on a street or highway based on the existence of probable cause to believe that it contains contraband or evidence of a crime. (See, *e.g., Chambers v. Maroney* (1970), 399 U.S. 42, 26 L. Ed. 2d 419, 90 S. Ct. 1975.) The *Chadwick* court refused to extend the automobile exception to all searches of luggage based on the fact that neither of the two policy considerations supporting the automobile exception apply to the search of luggage; that is, the court focused on the mobility of automobiles and the limited expectation of privacy in a vehicle. The court stated:

> "The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are not open to the public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile." (*United States v. Chadwick* (1977), 433 U.S. 1, 13, 53 L. Ed. 2d 538, 549, 97 S. Ct. 2476, 2484.)

The court then rejected the government's second argument that the warrantless search of personalty based upon probable cause was legal since the luggage searched was in

the possession of persons lawfully arrested in public. The court noted that it is the potential dangers inherent in custodial arrests which obviate the need for a warrant to search the items within the immediate control of the arrestee. Since the search of the footlocker was not conducted at the time of the arrest and since the footlocker was under the government's exclusive control, the court refused to view the search as falling within the incident-to-an-arrest exception to the fourth amendment warrant requirement.

Although the *Chadwick* search was not an inventory of the contents of an impounded vehicle, we find the case to be instructive as to the court's view of the individual's expectation of privacy in personal luggage. From the language of the opinion, we are able to glean a high privacy interest in the footlocker and, therefore, a preference for the issuance of warrants wherever possible for the search of personal luggage. We also deem important the court's refusal to extend the automobile exception to the search of the footlocker. This refusal is consistent with the court's earlier statement that "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." (*Coolidge v. New Hampshire* (1971), 403 U.S. 443, 461-62, 29 L. Ed. 2d 564, 580, 91 S. Ct. 2022, 2035.) Finally, we note that the footlocker in *Chadwick* was locked. It is not expressly stated that there would be a diminished expectation of privacy in the footlocker if it were unlocked. (See Allen & Schaefer, *Great Expectations: Privacy Rights in Automobiles*, 34 U. Miami L. Rev. 99, 138 (1979).) We do not think, however, that the court would have reached a different result if the footlocker had been unlocked.

This conclusion is supported by the Supreme Court's more recent case of *Arkansas v. Sanders* (1979), 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 2586. In that case, Little Rock police officers, acting on a tip from a reliable informant, observed a suspect retrieve from the airport baggage claim area a green suitcase which allegedly contained marijuana. After meeting a companion, the suspect placed the suitcase in the trunk of a taxi. The officers followed the taxi and stopped the vehicle several blocks from the airport. Pursuant to the officers' request, the taxi driver opened the trunk of the automobile. The officers then opened the suitcase and discovered over nine pounds of marijuana. They did not have a search warrant and had not

obtained consent to search.

Prior to the trial on marijuana-possession charges, the respondent filed a motion to suppress the evidence found in the suitcase. The motion was denied and the respondent was subsequently convicted by a jury. The Supreme Court of Arkansas reversed the conviction, finding that no exigent circumstances were present which would justify the warrantless search of the suitcase. The United States Supreme Court agreed with the Arkansas Supreme Court in its assertion that the fact that respondent's suitcase was unlocked did not diminish his legitimate expectation of privacy in the contents of the luggage. In its application of *Chadwick*, the court rejected the State's contention that the warrantless search of the suitcase was proper under the automobile exception and held that a warrant is generally required before personal luggage can be searched. Thus, the extent to which the fourth amendment applies to luggage and other containers for personal effects does not depend upon whether the container is seized from an automobile. The court in *Arkansas v. Sanders* found the warrantless search of respondent's suitcase to be unreasonable due to the lack of exigent circumstances; that is, the police officers could have lawfully detained the respondent and secured the suitcase without endangering themselves or risking the loss of the evidence.

We note that *Opperman* involved an inventory search of an integral part of an automobile rather than an inventory of a container. While *Chadwick* and *Sanders* involved searches of containers taken from vehicles, the searches were not conducted as inventories but were based upon probable cause. Thus, the United States Supreme Court has yet to pass on the permissible limits of inventory searches of containers taken from vehicles. However, from a reading of the *Opperman*, *Chadwick* and *Sanders* opinions, the following principles emerge: An inventory search of an automobile is reasonable and therefore constitutionally permissible when conducted in accordance with standard, as opposed to arbitrary, law-enforcement procedures. In order for the customary inventory search to be deemed reasonable, it must further three objectives: the protection of the owner's interest in his property; the protection of police officers as custodians of the property from claims of loss or damage; the protection of the police from risk of harm. A warrant is generally required for the search of luggage or any other container of personal

effects. The warrantless search of such a container, therefore, will be deemed unconstitutional unless it can be justified under an established exception to the warrant requirement. The mere fact that the container is found in a vehicle or is seized subsequent to an arrest based upon probable cause will be insufficient to bring the warrantless search within the automobile exception or the search-incident-to-an-arrest exception.

In view of the above-stated principles and in light of our opinion in *People v. Hamilton* (1979), 74 Ill. 2d 457, we hold that the procedure of inventorying the contents of a suitcase found in a lawfully impounded vehicle is, in the absence of exigent circumstances, unreasonable and therefore in violation of the fourth amendment.

In *People v. Hamilton* (1979), 74 Ill. 2d 457, the defendant was injured in an automobile accident and was taken to a hospital. An inventory of his personal effects was performed by a nurse and an orderly in accordance with hospital procedure. During the course of the inventory, the orderly found a locked briefcase. He unlocked the case with a key found in the defendant's possession and discovered a closed bag containing what he believed, upon opening and examining its contents, to be heroin. The orderly told the nurse of his discovery. The bag was returned to the suitcase and the case was locked and placed at the foot of defendant's bed in the hospital emergency room. A police officer arrived to complete his accident report. The nurse informed the officer of some items found and stated, "You better check the briefcase." The officer then informed the defendant that his briefcase would be returned to the disabled vehicle and his property would be inventoried. Before leaving the emergency room, however, the police officer opened the suitcase, finding the contraband.

In *Hamilton* we were unable to find the opening of the briefcase by the officer to be a valid inventory. First, we questioned the officer's motive in opening the briefcase; that is, we believed that he opened the case not for the purpose of inventorying its contents but, rather, to search for contraband. We noted the high privacy interest accorded personal luggage in both the Supreme Court and First Circuit Court of Appeals opinions in the *Chadwick* case. We then tested the inventory against the threefold test enunciated in *Opperman* and utilized in our case of *People v. Clark* (1976), 65 Ill. 2d 169. Due to the lack of

danger to the police, we found no justification for the warrantless intrusion. Accordingly, we held that the State failed to meet the fourth amendment reasonableness test and, therefore, ruled the evidence was inadmissible. After a review of the record, we fail to find the existence of facts in the case before us which would warrant a result different than that reached in *Hamilton*.

The State contends that the search of the suitcase was reasonable due to the following: it was conducted in accordance with standard inventory procedures; the officers did not have improper investigatory motives; the exigencies of the automobile accident necessitated the caretaking procedures exercised; and defendant's expression of concern about an item of value justified an inventory of the contents of the suitcase. It is undisputed that the standard inventory procedure of the Johnson County sheriff's office included the opening of closed containers. While the fact that the procedure was one customarily followed is a factor supporting a finding of reasonableness (*South Dakota v. Opperman*), it is not conclusive.

The high privacy interest in the contents of luggage which we noted in *Hamilton*, as expressed in *Chadwick*, was recently reaffirmed by the Supreme Court in *Arkansas v. Sanders*. In our opinion in *Hamilton* we noted that the defendant, to the best of his ability, sought to safeguard his expectation of privacy in his briefcase. In the case before us, the defendant also sought to protect his expectation of privacy by his request that the witness, Carlock, close the luggage. In considering the validity of an inventory search, the high privacy interest in the luggage must be balanced against the three objectives as enunciated in *Opperman*. One objective, and a possible justification for an inventory search as noted in *Hamilton*, the protection of the police from danger, is clearly not presented by the facts of this case. Neither the sheriff nor his deputy contended that they feared for their safety. We find that the fulfillment of the other two objectives, that is, the preservation of defendant's property and the protection of the police from claims of lost or stolen property, could have been achieved in a less intrusive manner. As we noted in *Hamilton*, these two objectives could have been fulfilled by sealing the suitcase with tape and placing it in a locked locker or a storage room. Thus there were no circumstances present in this case that would justify a war-

rantless invasion of the defendant's expectation of privacy.

By finding this inventory to be invalid, we do not mean to hold that all warrantless openings of closed containers during the course of an inventory search are invalid. Certain exigent circumstances, such as danger to the officers or the destruction or mobility of the evidence, may justify the opening of such containers. We are unpersuaded, however, that any such exigencies were present in this case. The fact that the items were found following a serious automobile accident does not serve to increase the mobility of the item, the danger presented to the police, or the defendant's ability to destroy the evidence. Also, we do not view defendant's expression of concern over the items of value and the discovery of the $1,255 as justification for the opening of the suitcase. As hereinbefore stated, valuable property could have been adequately safeguarded by keeping the container intact.

In conclusion, we find the inventory search invalid. We therefore hold that the search of the suitcase was unreasonable under the fourth amendment and that the evidence should have been suppressed. Accordingly, we affirm the judgment of the appellate court reversing defendant's conviction.

Judgment affirmed.

MR. JUSTICE WARD, dissenting:

The deputy testified before the trial court, which denied the defendant's motion to suppress, that the suitcase "was probably a half an inch or three-quarters of an inch from being closed." The deputy knew that $1,255 in bills had been found in and around the overturned vehicle and he knew that the defendant had said that there was something valuable in the suitcase that he wanted "taken care of." The deputy testified that "the sheriff has always told us that on any wreck or tow-in that we have, that we have to make an inventory of all of the personal property, the items in any vehicle, to protect us and to protect them so that we know what's there."

The majority, it seems to me, takes a severely and unjustifiably restrictive view of what was held in *South Dakota v. Opperman* (1976), 428 U.S. 364, 49 L. Ed. 2d 1000, 96 S. Ct. 3092, and I consider that the trial court correctly held that the deputy did not act unreasonably in fully opening the suitcase.